

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>UNITED STATES OF AMERICA,</b>	)	<b>CASE NO.: 1:20-cr-00199-BYP-1</b>
	)	
<b>Plaintiff,</b>	)	<b>JUDGE BENITA Y. PEARSON</b>
	)	
<b>-vs-</b>	)	
	)	
<b>JASON TAYLOR,</b>	)	<b><u>DEFENDANT'S EMERGENCY MOTION</u></b>
	)	<b><u>FOR AMENDMENT OF ORDER OF</u></b>
<b>Defendant.</b>	)	<b><u>DETENTION</u></b>
	)	
	)	
	)	

**NOW COMES** Defendant, Jason Taylor, by and through undersigned counsel, and respectfully moves this Court pursuant to 18 U.S.C. § 3143, 18 U.S.C. § 3145(b) and Federal Rule of Criminal Procedure 46 for immediate release in light of the increasingly dire COVID-19 coronavirus pandemic.

The Bail Reform Act provides for the “temporary release” of a person in pretrial custody “to the extent that the judicial officer determines such release to be necessary for preparation of the person’s defense or for another compelling reason.” 18 U.S.C. § 3142(i). The health risk to Defendant is heightened given the conditions at CCA as described in detail below, which necessitates temporary release on bail until this pandemic has ended. Furthermore, pursuant to 18 U.S.C. § 3145(b), a defendant ordered detained by a magistrate judge may file a motion for revocation or amendment of the detention order.

During the period of release Mr. Taylor will reside with his wife and 5 children at 334 10<sup>th</sup> St., Elyria, Ohio 44035 and can be subject to home detention and GPS. Mr. Taylor suffers from chronic medical conditions, acute lymphedema, diabetes and lung blood clots and has been disabled for 5 years. Mr. Taylor had a Detention Hearing on March 20, 2020 before Judge

Limbert where the court ordered Mr. Taylor detained. In the 13 days since the Detention Hearing, infections from the Covid-19 pandemic have accelerated exponentially. While CCA has not announced infections within the privately contracted institution, the information is either being suppressed or it is only a matter of days or even hours before cases of the virus are confirmed there.

Respectfully submitted,

/s/ - Michael J. Goldberg

**MICHAEL J. GOLDBERG (0040839)**

**THE GOLDBERG LAW FIRM, LLC**

323 Lakeside Avenue, Suite 450

Cleveland, OH 44113

Tel: 216-696-4514

Fax: 216-781-6242

goldberg@goldberg-lawfirm.com

*Attorney for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been filed electronically this 2nd day of April, 2020. Notice of this filing will be sent to all Parties by operation of the Court's ECF system. Parties may access this filing through the Court's system.

/s/ - Michael J. Goldberg  
**MICHAEL J. GOLDBERG (0040839)**  
*Attorney for Defendant*

### **MEMORANDUM IN SUPPORT**

This is not an ordinary request or one counsel anticipated making. However, given the significant change in circumstances based on the Coronavirus the extraordinary relief request is justified.

Mr. Taylor's release is warranted because the conditions of confinement at the CCA are very likely to constitute a humanitarian crisis when the virus is introduced to the facility. Further, while we do not dispute the seriousness of the offenses in this matter, it does not justify his continued pretrial incarceration in light of the virus.

#### **I. THE CONDITIONS OF CONFINEMENT AT CCA ARE VERY LIKELY TO CONSTITUTE A HUMANITARIAN CRISIS WHEN THE VIRUS IS INTRODUCED TO THE FACILITY**

Mr. Taylor faces the grim threat of coronavirus within the correctional institution's walls. As of April 2, 2020, the new strain of coronavirus, which causes COVID-19, has infected over 956,000 people, leading to at least 48,000 deaths worldwide.<sup>1</sup> On March 11, 2020, the World Health Organization officially classified COVID-19 as a pandemic.<sup>2</sup> Governor DeWine has declared a State of Emergency, issued a "stay in place" order, closed all public schools and

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<sup>1</sup> Center for Systems Science and Engineering at Johns Hopkins University, Coronavirus COVID-19 Global Cases Dashboard (April 2, 2020), at

<https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6>.

<sup>2</sup> *WHO Characterizes COVID-19 as a Pandemic*, World Health Organization (March 11, 2020) <https://bit.ly/2W8dwpS>.

shuttered dine-in restaurants and bars.<sup>3</sup> Further the Bureau of Prisons has suspended all visitation and inmate transfers.<sup>4</sup>

Unfortunately, there have been reported cases of Coronavirus within the Bureau of Prisons. Specifically, as of April 2, 2020, there are 57 confirmed cases in inmates and 37 confirmed cases in staff.<sup>5</sup> Mr. Taylor and his fellow inmates will be particularly vulnerable “when, not if” coronavirus comes to CCA.<sup>6</sup> Inmates will be<sup>7</sup> an “incubator” for the disease<sup>8</sup> with “petri-like-conditions.”<sup>9</sup> Conditions of pretrial confinement create the ideal environment for

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<sup>3</sup> *Stay at Home Order*, Ohio Director of Health, Amy Acton, MD, MPH (Mar. 22, 2020) <https://coronavirus.ohio.gov/static/DirectorsOrderStayAtHome.pdf>

<sup>4</sup> BOP Implementing Modified Operations (March 31, 2020) [https://www.bop.gov/coronavirus/covid19\\_status.jsp](https://www.bop.gov/coronavirus/covid19_status.jsp)

<sup>5</sup> Bureau of Prisons COVID-19 Information (April 2, 2020) <https://www.bop.gov/coronavirus/>.

<sup>6</sup> Rich Schapiro, *Coronavirus Could ‘Wreak Havoc’ on U.S. Jails, Experts Warn*, NBC NEWS (Mar. 12, 2020), <https://www.nbcnews.com/news/us-news/coronavirus-could-wreak-havoc-u-s-jails-experts-warn-n1156586> (“We’re in a very perilous stage right now,” said Dr. Homer Venters, the former chief medical officer of the New York City jail system. “It’s just a matter of time before we see cases inside jails and prisons.”).

<sup>7</sup> Rich Schapiro, *Coronavirus Could ‘Wreak Havoc’ on U.S. Jails, Experts Warn*, NBC NEWS (Mar. 12, 2020), <https://www.nbcnews.com/news/us-news/coronavirus-could-wreak-havoc-u-s-jails-experts-warn-n1156586> (“We’re in a very perilous stage right now,” said Dr. Homer Venters, the former chief medical officer of the New York City jail system. “It’s just a matter of time before we see cases inside jails and prisons.”).

<sup>8</sup> Martin Kaste, *Prisons and Jails Worry About Becoming Coronavirus ‘Incubators’*, NPR (Mar. 13, 2020), <https://www.npr.org/2020/03/13/815002735/prisons-and-jails-worry-aboutbecoming-coronavirus-incubators>.

<sup>9</sup> P. Leila Barghouty, *U.S. Prisons Are Not Ready for Coronavirus*, THE OUTLINE (Mar. 6, 2020), <https://theoutline.com/post/8770/prison-coronaviruscovid-19-outbreak?zd=1&zi=oixu2i52>; see also Kaiser Health News, *Could Coronavirus Cause a National Prison Lockdown?*, U.S. NEWS & WORLD REPORT (Mar. 13, 2020), at <https://www.usnews.com/news/healthiestcommunities/articles/2020-03-13/could-coronavirus-cause-a-national-prisonlockdown> (“Though small by comparison, the federal system sheds light on issues many state, county and local officials are grappling with now. Because the facilities are typically dense and crowded, they could become prime breeding grounds for the highly contagious coronavirus.”); Chris Strohm, *Prisons’ Coronavirus Risk Puts Justice Department Under Pressure*, BLOOMBERG (Mar. 12, 2020) (noting concerns that coronavirus outbreak “could spark

the transmission of contagious disease.<sup>10</sup> Inmates cycle in and out of pretrial facilities from all over the state and the country, and people who work in the facilities leave and return daily, without screening. Incarcerated people have poorer health than the general population, and even at the best of times, medical care is limited in detention centers.<sup>11</sup> Many people who are incarcerated also have chronic conditions, like diabetes or HIV, which makes them vulnerable to severe forms of COVID-19. According to public health experts, incarcerated individuals “are at special risk of infection, given their living situations,” and “may also be less able to participate in proactive measures to keep themselves safe”; “infection control is challenging in these settings.”<sup>12</sup> Outbreaks of the flu regularly occur in jails, and during the H1N1 epidemic in 2009, many jails and prisons dealt with high numbers of cases.<sup>13</sup> In China, officials have confirmed the coronavirus spreading at a rapid pace in Chinese prisons, totaling 555 cases as of three weeks ago.<sup>14</sup> Secretary of State Mike Pompeo has called for Iran to release Americans detained there

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riots”); Courtney Bubl , *Federal Prison Employees and Others Question BOP’s Readiness for Coronavirus*, GOV. EXEC. (MAR. 11, 2020), <https://www.govexec.com/management/2020/03/federal-prison-employeesand-others-question-bops-readiness-coronavirus/163692/> (“History has shown time and time again that the Federal Bureau of Prisons has never been a proactive agency, but instead a reactive agency.”); Joshua Eaton, *Federal Prisons Don’t Have Coronavirus Test Kits for Inmates*, ROLL CALL (Mar. 6, 2020), at <https://www.rollcall.com/2020/03/06/federal-prisons-dont-have-coronavirus-test-kits-for-inmates/> (“Federal prisons, whose inmates may be a high-risk population for a coronavirus outbreak, do not have kits to test for the disease available.”).

<sup>10</sup> Joseph A. Bick (2007). Infection Control in Jails and Prisons. *Clinical Infectious Diseases* 45(8):1047-1055, at <https://doi.org/10.1086/521910>.

<sup>11</sup> Laura M. Maruschak et al. (2015). Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12. NCJ 248491. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, at <https://www.bjs.gov/content/pub/pdf/mpsfpi1112.pdf>

<sup>12</sup> “Achieving A Fair And Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal Experts in the United States,” (March 2, 2020), at <https://bit.ly/2W9V6oS>.

<sup>13</sup> *Prisons and Jails are Vulnerable to COVID-19 Outbreaks*, THE VERGE (Mar. 7, 2020), at <https://bit.ly/2TNcNZY>.

<sup>14</sup> Alice Su and Emily Baumgartner, *They Were Already in China’s Prisons. Now the Coronavirus is There, Too*, LOS ANGELES TIMES (Feb. 28, 2020), at <https://www.latimes.com/world->

because of the “deeply troubling” “[r]eports that COVID-19 has spread to Iranian prisons.”<sup>15</sup>

Courts across Iran have granted 54,000 inmates furlough as part of the measures to contain coronavirus across the country.<sup>16</sup> And deadly prison riots have broken out in Italy over fears of the virus’s spread through overcrowded facilities.<sup>17</sup> Because of the increased risks posed to prisoners, District Attorneys in New York and California have sought or agreed not to oppose the release of vulnerable inmates and those facing low-level charges.<sup>18</sup>

The detainees at CCA face especially high risk. The majority of the individuals imprisoned there are housed in small cells with a shared toilet and sink, and eat meals and have recreation with the other members of their pods. These dangerous conditions exacerbate what is already a frightening and dire situation for the general population, and raise constitutional concerns of cruel and unusual punishment, especially for prisoners who are at greater risk of

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[nation/story/2020-02-28/lawyers-activistspastors-ughurs-families-of-detainees-in-china-fear-coronavirus-spreadoutbreak-in-camps-and-prisons](#). See also Rhea Mahbubani, *Chinese Jails Have Become Hotbeds of Coronavirus As More Than 500 Cases Have Erupted, Prompting the Ouster of Several Officials*, BUSINESS INSIDER (Feb. 21, 2020) at <https://bit.ly/2vSzSRT>.

<sup>15</sup> Jennifer Hansler and Kylie Atwood, *Pompeo Calls for Humanitarian Release of Wrongfully Detained Americans in Iran Amid Coronavirus Outbreak*, CNN (Mar. 10, 2020), at <https://cnn.it/2W4OpV7>.

<sup>16</sup> Claudia Lauer and Colleen Long, *US Prisons, Jails On Alert for Spread of Coronavirus*, The Associated Press (Mar. 7, 2020), at <https://apnews.com/af98b0a38aaabedbc059092db356697>.

<sup>17</sup> *Death Toll Rises from Italy’s Coronavirus Prison Riots*, REUTERS (Mar. 10, 2020), at <https://www.reuters.com/article/us-health-coronavirus-italyprisons/death-toll-rises-from-italys-coronavirus-prison-riotsidUSKBN20X2DG>.

<sup>18</sup> *CORONAVIRUS: SENTENCED TO COVID-19*, THE DAILY APPEAL (Mar. 12, 2020), at <https://theappeal.org/sentenced-to-covid-19/> (reporting that Brooklyn’s District Attorney has asked New York Governor Andrew Cuomo to grant emergency clemency to elderly and sick prisoners); Darwin Bond Graham, *San Francisco Officials Push to Reduce Jail Population to Prevent Coronavirus Outbreak*, THE DAILY APPEAL, at <https://theappeal.org/coronavirus-san-francisco-reduce-jail-population/> (Mar. 11, 2020) (reporting that San Francisco’s District Attorney has instructed prosecutors not to oppose motions for release of pre-trial detainees facing misdemeanor or drug-related felony charges unless they pose a danger to public safety).

contracting lethal infections like the novel coronavirus due to factors such as age or pre-existing medical conditions. *See Estelle v. Gamble*, 429 U.S. 97, 104–05 (1976)

A “judicial officer may, by subsequent order, permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason.” 18 U.S.C. § 3142(i). The circumstances that existed when Mr. Taylor was ordered detained have now changed. There is a pandemic that poses a direct risk that is far greater if he continues to be detained during this public health crisis.

Liberty is the norm and “detention prior to trial or without trials is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). One charged with a crime is, after all, presumed innocent. *Stack v. Boyle*, 342 U.S. 1, 4 (1951). A single individual unnecessarily detained before trial is one individual too many, and the increasing use of the practice places tremendous wear on our constitutional system. *United States v. Montalvo-Murillo*, 495 U.S. 711, 723–24 (1990) (Stevens, J., dissenting, joined by Brennan and Marshall, JJ.). Due to the crucial interests involved, it follows that a “case-by-case” approach is required at any stage of the case in assessing the propriety of pretrial detention. *See United States v. Gonzales Claudio*, 806 F.2d 334, 340 (2d Cir. 1986) (discussing due process analysis for evaluating propriety of prolonged pretrial detention, and the interests at stake) (citations omitted), *cert. dismissed sub nom., Melendez-Carrion v. United States*, 479 U.S. 978 (1986).

The courts have long recognized that there is no greater necessity than keeping a defendant alive, no matter the charge. As Judge Weinstein held, “We do not punish those who have not been proven guilty. When we do punish, we do not act cruelly. Continued incarceration of this terminally ill defendant threatens both of these fundamental characteristics



of our democracy.” *United States v. Scarpa*, 815 F.Supp.88 (E.D.N.Y. 1993) (pretrial defendant with AIDS facing murder charges released on bail because of the “unacceptably high risk of infection and death on a daily basis inside the MCC”).

This Court should consider the “total harm and benefits to prisoner and society” that continued pretrial imprisonment of Mr. Taylor will yield, relative to the heightened health risks posed to him during this rapidly encroaching pandemic. *See Davis v. Ayala*, 135 S. Ct. 2187, 2209 (2015) (Kennedy, J., concurring) (calling for heightened judicial scrutiny of the projected impact of jail and prison conditions on a defendant); *United States v. Mateo*, 299 F. Supp. 2d 201, 212 (S.D.N.Y. 2004) (reducing sentence where defendant’s pretrial conditions were “qualitatively more severe in kind and degree than the prospect of such experiences reasonably foreseeable in the ordinary case”).

Mr. Taylor is currently scheduled for trial on May 15, 2020. Allowing him the opportunity to return home to his family, under any conditions imposed by this Honorable Court, is appropriate so that his health is better protected and he may help support his family during this pandemic while awaiting trial. Mr. Taylor understands that he would have to comply with any conditions if released by this Court and appear as ordered.

Wherefore, for the foregoing reasons, it is respectfully requested that this Honorable Court issue and Order, pursuant to 18 U.S.C. § 3143, 18 U.S.C. § 3145(b) and Federal Rule of Criminal Procedure 46, for immediate release of Jason Taylor in light of the increasingly dire COVID-19 coronavirus pandemic.

Respectfully submitted,

/s/ - Michael J. Goldberg  
**MICHAEL J. GOLDBERG (0040839)**  
**THE GOLDBERG LAW FIRM, LLC**  
323 Lakeside Avenue, Suite 450

Cleveland, OH 44113  
Tel: 216-696-4514  
Fax: 216-781-6242  
goldberg@goldberg-lawfirm.com  
*Attorney for Defendant*